

**SALES AND USE TAX REVIEW COMMISSION  
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416**

**BILL NUMBER:**  
S-2358

**DATE OF INTRODUCTION:**  
February 28, 2005

**SPONSOR:**  
Senator Asselta

**DATE OF RECOMMENDATION:**  
April 8, 2005

**IDENTICAL BILL:**

**COMMITTEE:**  
Senate Economic Growth Committee

**DESCRIPTION:**  
This bill extends eligibility for the sales and use tax exemption of energy and utility service purchases by certain manufacturing-intensive businesses in Urban Enterprise Zones.

**ANALYSIS:**  
This bill amends the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60, et. seq., to delete the requirement that a qualified business within an Urban Enterprise Zone must employ at least 500 employees to qualify for a sales and use tax exemption on energy and utility service purchases.

Under a recently enacted incentive, the State extended to qualified businesses or vertically integrated combinations of qualified businesses manufacturing a single product within an Urban Enterprise Zone, a sales and use tax exemption for its energy and utility service purchases if:

1. at least 500 persons are employed by the business within an Urban Enterprise Zone,
2. at least 50 percent of its Urban Enterprise Zone staff work in manufacturing,
3. the business consumes the energy and utility service exclusively on its Urban Enterprise Zone premises, and
4. the business satisfies the definition of a "qualified business" under the "New Jersey Urban Enterprise Zones Act."

[Section 23(a) of P.L.2004, c.65 (N.J.S.A. 52:27H-87.1)].

This bill allows all manufacturing-intensive qualified businesses located in Urban Enterprise Zones to claim a sales and use tax exemption for their energy and utility service purchases. Currently, the State reserves the exemption only to larger manufacturing-intensive qualified businesses situated within such zones.

The original intent of the Legislature in enacting the sales tax exemption for enterprise zone vendors was to create an incentive for businesses to locate to depressed areas within the State. To this end, the Legislature enacted an exemption for the purchase of most items of tangible personal property by qualified businesses for the exclusive use or consumption on the premises of the qualified business at its zone location. Only personal property controlled by the qualified business qualified for the exemption. Items such as office and business equipment and supplies, furnishings, trade fixtures, and repair or construction materials are examples of items that were initially viewed to fall within the exemption. Currently there are very narrow exemptions from sales tax for natural gas and electricity purchases pursuant to P.L.1997, c.162.

Manufacturing facilities located outside of an Urban Enterprise Zone that are not entitled to the exemption will be at a great disadvantage. Enacting the bill may create a slippery slope because the similarly situated manufacturing facilities located outside of the zone will petition for a similar tax exemption.

Further, varying tax rates from municipality to municipality threatens economic neutrality and horizontal equity within the State. The Doctrine of Economic Neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The goal, upon which the Urban Enterprise Zone Act is based, is to bring new businesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The bill eliminates sales tax on transactions involving sales of energy and utility services within the enterprise zones. This disparate treatment of certain transactions violates this doctrine.

The sales and use tax is a broad-based tax that is designed to raise revenue from the imposition of tax at a relatively low rate on a large amount of retail transactions. Exclusions from the tax greatly impact on the very nature of the tax and the requirements to raise needed revenue. If the revenue is required from the imposition of the existing tax it must be realized that the amount not received by virtue of the proposed exemption will have to be raised from other sources. An exclusion of manufacturing facilities from sales and use tax on sales of energy and utility service would save an individual purchaser a fairly insignificant sum every year. However, the cumulative loss of revenue to the State leaves the State to find other means of generating the revenue lost as a result of this exclusion. Considering the State's current budgetary crisis, this bill is particularly troubling because manufacturers are among the largest users of electricity and natural gas.

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The Commission does not recommend enactment of this bill.

**COMMISSION MEMBERS FOR PROPOSAL: 0**

**COMMISSION MEMBERS AGAINST PROPOSAL: 6**

**COMMISSION MEMBERS ABSTAINING: 0**

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